

In the Matter of Martin E. Brannan, Bar. No. 017151 and Michael B. Whiting, Bar No. 022092, PDJ-2011-9006 [File Nos. 10-0488 and 10-0489] effective 06/30/2011. Attorneys Reprimanded and costs imposed.

Pursuant to Rule 57(a)(4)(A), Ariz.R.Sup.Ct., the PDJ approved the Agreement for Discipline by Consent submitted by the parties and reprimanded Martin Brannan and Michael Whiting.

In Count One, Respondents, in their capacity as county attorney and chief deputy county attorney, authorized county investigators to interview a criminal defendant (who was incarcerated and represented by counsel) to ascertain whether or not the defendant had been advised by his attorney of the pending plea offer. Respondent Brannan erroneously believed that pursuant to *Montejo v. Louisiana*, 129 S.Ct. 2079 (Louisiana 2009), it would be permissible to interview the defendant regarding the plea as long as the investigators "Mirandized" the defendant and he waived his right to have his counsel present. The defendant's attorney did not receive advanced notice of the visit and was not present during the visit.

Additionally, File No. 11-0514, Respondent Whiting issued a press release in the criminal matter that criticized the judge and his decision to release the defendant and dismiss the matter with prejudice. Respondent Whiting's statements in the press release indicated that the judge's ruling contained political statements and personal attacks. The press release further stated that the judge's ruling quoted from the record entirely out of context and he (Whiting) was shocked and puzzled by the decision, which lacked any supporting legal authority.

Respondent Brannon's misconduct as described above constituted grounds for the imposition of discipline pursuant to the Rules of the Supreme Court of Arizona and violated Rule 42, ER 4.2 (communications with person represented by counsel).

Respondent Whiting's misconduct as described above constituted grounds for the imposition of discipline pursuant to the Rules of the Supreme Court of Arizona and violated Rule 42, ER 4.2 (communications with person represented by counsel) and Rule 41(c) (maintain respect due courts of justice and judicial officers).

Respondents' negligent misconduct caused actual harm to the legal system.

The following factors were found in aggravation: 9.22(i) (substantial experience in the practice of law).

The following factors were found in mitigation: 9.32(a) (absence of prior disciplinary offenses), 9.32(b) (absence of selfish or dishonest motive), and 9.32(e) (full and free disclosure to a disciplinary board or cooperative attitude).

The agreement is accepted and costs awarded in the amount of \$1,380.00. The proposed final judgment and order is reviewed, approved and signed.

